ABDUL RAHMAN v. ARIFFIN

[A.C.J. (Thomson J.) January 19, 1956]

[Ipoh — Civil Appeal No. 24 of 1955]

Contract — Bailment — Onus on bailee to show that loss or damage caused to the goods bailed was not attributable to his lack of care — Contract (Malay States) Ordinance, 1950, ss. 104 and 106.

This was a claim for the value of a buffalo which the plaintiff had entrusted to the defendant in accordance with an agreement between them under which the defendant was to look after the buffalo and was to share its produce in equal parts with the plaintiff. The learned Magistrate held that there was a contract of bailment of the buffalo but held that as the plaintiff had not established that the loss of the buffalo was through the neglect or default of the defendant, the bailee, he had no cause of action.

Held: the onus was on the defendant as bailee to show that the loss was not attributable to lack of care on his part and therefore the learned Magistrate was wrong in giving judgment for the defendant at the close of the case for the plaintiff.

Case referred to:—

(1) *Phipps v. New Claridge's Hotel (Ltd.)* 22 T.L.R. 49.

CIVIL APPEAL.

S. P. Seenivasagam for the appellant.

Thomson J. (delivering oral judgment): — This appeal arises from a claim for the value of a buffalo which the appellant had entrusted to the respondent. There seems to be no question that the buffalo was handed to the respondent in accordance with an agreement between the parties under which the respondent was to look after the buffalo and was to share its produce in equal parts with the appellant.

The learned Magistrate held that that contract was what is known as a contract of bailment, and so much of the appeal as questions that decision of the learned Magistrate has in effect been abandoned. In my view the learned Magistrate was quite right on the point.

At some stage, again, I think this is common ground, the buffalo was lost. So much was clear from the evidence given by the appellant.

At the close of the appellant's case the learned Magistrate held, and here I quote his own words, "It was not established by the plaintiff that the loss was through the neglect or default of the defendant." On that he proceeded to hold that no cause of action had been made out by the appellant and dismissed the action.

Against that decision the appellant has now appealed.

I do not find it necessary to discuss the point at great length because in my opinion the law is clearly stated in the following passage from *Chitty on Contract* 20th Edn. p. 846:—

"In the case of loss or damage to goods bailed, the onus is on the bailee to show that the loss or damage was not attributable to any lack of care which by law is required of him."

On this point, I also refer to the case of *Phipps v. The New Claridge's Hotel (Ltd.)*[1] where the facts were very similar to those in the present case.

There is nothing inconsistent between the law as thus stated in *Chitty* and sections 104 and 106 of the Contracts Ordinance. The point is more one of onus than one of substantive law. It is true that the bailee is only responsible for the consequences of failure to observe the standard of care laid down by section 104 and there is no doubt that up to a point there is an onus upon any plaintiff which must be discharged. It seems to me, however, that once loss has been proved that onus has been discharged and the onus then shifts to the defendant to shew that the loss occurred in circumstances which shewed no lack of care on his part.

In the circumstances, I think the learned Magistrate was wrong in giving judgment for the defendant at the close of the case for the plaintiff.

There will have to be a new trial and there will be an order accordingly.

Costs of the appeal will abide the issue of the new trial.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons.*

ARUNASALAM v. LETCHUMI (f)

[A.C.J. (Thomson J.) January 24, 1956]

[Ipoh — Civil Appeal No. 25 of 1955]

Moneylenders Ordinance, 1951 s. 27 — Attestation of promissory note — Necessity to call attesting witness — Evidence Ordinance, 1950, s. 68.

The appellant in this case was a licensed moneylender and claimed against the defendant, a female South Indian rubber tapper who did not understand the English language, on an alleged promissory note for $150. On the facts the learned Magistrate accepted the story of the defendant and rejected that of the plaintiff. He held further that as the promissory note sued on was a document which was required by law to be attested and as the attesting witness was not called to give evidence, it could not be used in evidence by reason of s.68 of the Evidence Ordinance.

Held: the promissory note in this case was required to be attested by s.27 of the Moneylenders Ordinance and that being so it was a document which could not be used until s.68 of the Evidence Ordinance was complied with.